

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

DANNYE T. McINTOSH,)	
)	
vs.)	No. 1:05-cr-119-JMS-TAB-3
)	No. 1:13-cv-01866-JMS-DML
)	
UNITED STATES OF AMERICA)	

Entry and Order Dismissing Action

I.

Dannye McIntosh was convicted of drug offenses in No. IP 05-cr-119-03-H/F. He now seeks relief pursuant to 28 U.S.C. § 2255. His motion is before the court for its preliminary review pursuant to Rule 4 of the *Rules Governing Section 2255 Proceedings in the United States District Courts*.

In 2008, McIntosh challenged his conviction and sentence through a motion for post-conviction relief pursuant to 28 U.S.C. § 2255. This court denied McIntosh's § 2255 motion in 1:08-cv-422-TWP-DKL (S.D.Ind. Sept. 20, 2011). The court further denied a certificate of appealability. The Seventh Circuit similarly denied McIntosh's request for a certificate of appealability. That court explained, "[w]e find no substantial showing of the denial of a constitutional right." *McIntosh v. United States of America*, 11-3294 (7th Cir. March 8, 2012).

When there has already been a decision on the merits in a federal habeas action, to obtain another round of federal collateral review a petitioner requires permission from the Court of Appeals under 28 U.S.C. § 2244(b). *See Potts v. United States*, 210 F.3d 770 (7th Cir. 2000). This statute, § 2244(b)(3), "creates a 'gatekeeping' mechanism for the consideration of second or successive [habeas] applications in the district court." *Felker v. Turpin*, 518 U.S. 651, 657

(1996); *see Benefiel v. Davis*, 403 F.3d 825, 827 (7th Cir. 2005); *United States v. Lloyd*, 398 F.3d 978 (7th Cir. 2005). A subsequent motion is “second or successive” within the meaning of the statute when the same underlying conviction is challenged. *See Dahler v. U.S.*, 259 F.3d 763 (7th Cir. 2001).

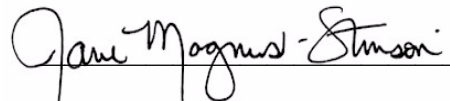
The present action is another attempt to collaterally challenge the conviction in No. IP 05-cr-119-03-H/F. It is done without the authorization required by § 2244(b). Accordingly, the action must be dismissed for lack of jurisdiction and the action summarily dismissed pursuant to Rule 4 of the *Rules Governing Section 2255 Proceedings in the United States District Court*.

II.

Judgment consistent with this Entry shall now issue.

IT IS SO ORDERED.

Date: 11/25/2013

A handwritten signature in black ink, reading "Jane Magnus-Stinson", written over a horizontal line.

Hon. Jane Magnus-Stinson, Judge
United States District Court
Southern District of Indiana

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